

AMENDED IN SENATE APRIL 14, 2005

SENATE BILL

No. 756

Introduced by Senator Romero

February 22, 2005

An act to amend Section 12956.1 of the Government Code, relating to discrimination.

LEGISLATIVE COUNSEL'S DIGEST

SB 756, as amended, Romero. Discrimination: restrictive covenants.

Existing law authorizes any person holding an ownership interest of record in property containing a restrictive covenant ~~determined by the Department of Fair Employment and Housing to violate the fair housing laws to cause the recording of a modified document with the covenant stricken, as prescribed.~~ Existing law authorizes any person holding an ownership interest of record in property that he or she believes is subject to an unlawfully restrictive covenant to submit for recordation a modified document with the covenant stricken to file an application with the Department of Fair Employment and Housing requesting a determination of whether the restrictive covenant violates the fair housing laws and is void. Existing law requires the department to provide the applicant with a written statement entitled "RACIALLY OR OTHERWISE UNLAWFULLY RESTRICTIVE COVENANT MODIFICATION" if the department determines that the document contains a restrictive covenant that violates the law. Existing law authorizes the applicant to strike out a void restrictive covenant identified by the department, complete and attach a copy of the written statement from the department to the front of the document, and cause the modified document to be recorded if all other

requirements of recordation are met, including the payment of any recordation fee.

This bill would delete the provisions authorizing a person to file an application with the Department of Fair Employment and Housing, requiring the department to respond, and authorizing the person to strike out the restrictive covenant, attach a statement to the document, and record the modified document.

Existing law requires a county recorder, title insurance company, escrow company, real estate broker, real estate agent, or association that provides a copy of a declaration, governing document, or deed to any person to place a cover page or stamp on the first page of the previously recorded document or documents generally stating that if the document contains a restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to existing law.

This bill would add to the statement above the procedure to be followed to remove the illegal covenant. The bill would become operative only if AB 394 of the 2005-06 Regular Session is enacted and adds the provision that contains the procedure to be followed to remove the illegal covenant.

~~This bill would make technical, nonsubstantive changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12956.1 of the Government Code is
- 2 amended to read:
- 3 12956.1. (a) As used in this section, “association,”
- 4 “governing documents,” and “declaration” have the same
- 5 meanings as set forth in Section 1351 of the Civil Code.
- 6 (b) (1) A county recorder, title insurance company, escrow
- 7 company, real estate broker, real estate agent, or association that
- 8 provides a copy of a declaration, governing document, or deed to
- 9 any person shall place a cover page or stamp on the first page of
- 10 the previously recorded document or documents stating, in at
- 11 least 14-point boldface type, the following:

“If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section ~~12956.1~~ 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.”

“Pursuant to Section 12956.2 of the Government Code, a person who holds an ownership interest of record in property that he or she believes is the subject of an unlawfully restrictive covenant in violation of subdivision (l) of Section 12955 may record, without being charged a fee pursuant to Section 6103, a document titled Restrictive Covenant Modification. The modification document shall include a complete copy of the original document containing the illegal language with the illegal language stricken and shall be signed under penalty of perjury. A Restrictive Covenant Modification may be obtained at the County Recorder’s office.”

(2) The requirements set forth in paragraph (1) shall not apply to documents being submitted for recordation to a county recorder.

~~(e) (1) Any person who holds an ownership interest of record in property that he or she believes is the subject of a restrictive covenant referred to in subdivision (b), may file an application with the Department of Fair Employment and Housing requesting a determination of whether the restrictive covenant violates the fair housing laws and is void. Any application pursuant to this subdivision shall be in writing, contain a copy of the document, and identify the location within the document where the restrictive covenant is located.~~

~~(2) If the department determines that the document contains a restrictive covenant that violates the law, it shall provide the applicant with a written statement entitled “RACIALLY OR OTHERWISE UNLAWFULLY RESTRICTIVE COVENANT MODIFICATION” that sets forth this determination, including the page and line numbers of any void restrictive covenant, which statement may be recorded with the document pursuant to paragraph (3). The department shall process all applications within 90 days. The department shall include the following~~

1 language at the end of the written statement which the applicant
2 may complete and sign for purposes of recording pursuant to
3 paragraph (3):

4 I (We) _____ have an ownership interest of record in
5 the property located at _____ (Address) that is the
6 subject of this document. The Department of Fair
7 Employment and Housing has determined that this document
8 contains a restrictive covenant that violates the law and is
9 void. Pursuant to Section 12956.1 of the Government Code,
10 this document is being recorded solely for the purpose of
11 eliminating that restrictive covenant as shown on page(s) ____
12 of the document recorded on ____ (Date) in book ____ and page
13 ____, or instrument number ____ of the official records of the
14 County of _____. No other changes have been made.

15 If executed at any place, within or without this state:

16 I certify (or declare) under penalty of perjury under the laws
17 of the State of California that the foregoing is true and
18 correct.

19 —

20 _____
21 _____
22 (Date and Place) (Owner(s) Signature(s))

23
24 (3) The applicant may strike out a void restrictive covenant
25 identified by the department, complete and attach a copy of the
26 written statement from the department to the front of the
27 document, and cause the modified document to be recorded, if
28 provided that all other requirements of recordation are met,
29 including the payment of any recordation fee.

30 (d) Subdivision (c) shall not apply to persons holding an
31 ownership interest in property that is part of a common interest
32 development as defined in subdivision (c) of Section 1351 of the
33 Civil Code, and where the board of directors of that common
34 interest development is subject to the requirements of subdivision
35 (b) of Section 1352.5 of the Civil Code.

36 (e) This section shall have no bearing or effect upon Section
37 12955.9.

38 (f)

39 (c) Any person who records a document for the express
40 purpose of adding a racially restrictive covenant is guilty of a

1 misdemeanor. The county recorder shall not incur any liability
2 for recording the document. Notwithstanding any other provision
3 of law, a prosecution for a violation of this subdivision shall
4 commence within three years after the discovery of the recording
5 of the document.

6 ~~(g) (1) Any person who holds an ownership interest of record~~
7 ~~in property that he or she believes is the subject of an unlawfully~~
8 ~~restrictive covenant in violation of subdivision (l) of Section~~
9 ~~12955 may submit for recordation to the county recorder of the~~
10 ~~county in which the property is located a modified document~~
11 ~~striking out the unlawfully restrictive covenant.~~

12 ~~(2) The county recorder may record the document, if all other~~
13 ~~requirements of recordation are met, including the payment of~~
14 ~~any recording fee, or may direct the person to obtain a~~
15 ~~determination, pursuant to subdivision (c), that the covenant is~~
16 ~~unlawful. If the recorder records the document, the recorder shall~~
17 ~~provide a form entitled “RACIAL OR OTHERWISE~~
18 ~~UNLAWFULLY RESTRICTIVE COVENANT~~
19 ~~MODIFICATION,” which shall be recorded attached to the front~~
20 ~~of the document that strikes the unlawfully restrictive covenant.~~

21 *SEC. 2. This bill shall become operative only if AB 394 of the*
22 *2005-06 Regular Session is enacted and adds Section 12956.2 to*
23 *the Government Code.*